IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Income Tax Appeal No. 206 of 2004

M/s B J Services Co. Middle East
as agent of Mr. Igmedio J. Tumanda,
Vikas Centre,
2nd Floor, S.V. Road,
Santacruz (W) Mumbai. ……Appellant

Versus

1. Income Tax Appellate Tribunal
   Delhi Bench 'F' New Delhi.

2. Commissioner of Income Tax (Appeals)
   Dehradun.

3. Assistant Commissioner of Income Tax,
   Special Circle, Dehradun …Respondents

Mr. V.K. Bist, Senior Advocate/ Mr. A. Chatterjee, Advocate for the appellant.
Mr. S.K.Posti, Advocate for the respondents.

Coram: Hon. Cyriac Joseph, C. J.
Hon. J.C.S. Rawat, J.

JUDGMENT

CYRIAC JOSEPH, C.J. (Oral)

1. This appeal is filed against the order dated 28.07.2004 passed by the Income Tax Appellate Tribunal, Delhi Bench 'F', New Delhi in I.T.A. No. 4109/ Del / 1998. The appellant is the assessee. The dispute relates to the Assessment Year 1994-95.

2. The substantial question of law raised in the appeal is as follows:

> "Whether on the facts and in the circumstances of the case, Tribunal is legally justified in treating the amount paid for the "off period" as the income earned in India in view of the explanation to section 9(1)(ii) while admittedly no service has been rendered during off period in India and inasmuch as, the subsequent amendment made in the explanation w.e.f. 01.04.2000 shows that the amount paid for "off period" or leave period is regarded as the income accrued in India only w.e.f. 01.04.2000?"

3. In Commissioner of Income Tax- and another Vs. Sedco Forex International Drilling Co. Ltd. and connected cases reported in (2003) 264 ITR 320, a Division Bench of this Court held that the payment of salary for "off period" was income earned in India, i.e., for services rendered in India under Section 9(1)(ii) and that "off period salary" was taxable under section 9(1)(ii) of the Income Tax Act, 1961.

4. Following the above mentioned judgment of a Division Bench of this Court, this appeal is dismissed.

(J.C.S. Rawat, J.) **(Cyriac Joseph, C.J.)**
17.09.2005 **17.09.2005**

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